REMARKS/ARGUMENTS

Claims 47-53, 55-63, 65-72, 74 and 75 are pending in the present application. In the Office Action dated April 8, 2008 (hereinafter, "Office Action"), all pending claims were rejected under 35 U.S.C. § 103(a). By this paper, claims 47, 57 and 67 are being amended. These amendments are supported by at least page 3, lines 5-6 and page 6, lines 10-12 of Applicants' specification.

Applicants respectfully respond to the Office Action.

I. Specification

The abstract has been amended to address the Examiner's objection. Accordingly, Applicants respectfully request that the objection be withdrawn.

II. Rejection of Claims 47-53, 55-63, 65-72 and 74-75 Under 35 U.S.C. § 103(a)

Claims 47-53, 55-63, 65-72 and 74-75 stand rejected under 35 U.S.C. § 103(a) based on U.S. Patent No. 7,212,306 to Chrisop et al. (hereinafter, "Chrisop") in view of U.S. Patent No. 7,148,980 to Tominaga (hereinafter, "Tominaga"). This rejection is respectfully traversed.

35 U.S.C. § 103(c) states that:

> Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Under 35 U.S.C. § 103(c) and M.P.E.P. § 706.02(l)(1), the Chrisop reference is disqualified as prior art for purposes of 35 U.S.C. § 103 against the claimed invention because this reference and the claimed invention were, at the time the invention was made, owned by the same person ***or subject to an obligation of assignment to the same person or organization***. More specifically, the Chrisop reference and the present application were, ***at the time the invention was made***, both subject to an obligation of assignment to the same organization, namely Sharp Corporation, which is also known as Sharp Kabushiki Kaisha, the Japanese form of the entity name. (Please see Appendix A with a

definition from wikipedia.org that explains that the phrase "Kabushiki Kaisha" roughly translates to "Co., Ltd.")

Applicants are attaching in Appendix B a redacted agreement between Sharp Laboratories of America, Inc. and Sharp Corporation (a.k.a. Sharp Kabushiki Kaisha). The date of the agreement is ***July 1, 1995***. (See page 1 of the agreement.) The present application was filed on ***January 15, 2002***. Thus, ***at the time the present invention was made***, both the Chrisop reference and the present application were subject to an obligation of assignment to Sharp Corporation (a.k.a. Sharp Kabushiki Kaisha).

A search of patents in the U.S. Patent database will show that the common procedure for these corporate entities is to first have the patent application assigned from the inventors to Sharp Laboratories of America, Inc., and then from Sharp Laboratories of America, Inc. to Sharp Corporation (a.k.a. Sharp Kabushiki Kaisha). The following list is only a partial list of U.S. Patents that have followed this assignment process:

U.S. Patent No.:	First Assignee:	Second Assignee:
7,212,306	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,209,245	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,208,768	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,208,372	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,206,804	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,205,238	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,203,620	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,203,234	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,199,029	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,197,709	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,194,700	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,194,688	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha

7,194,147	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,192,866	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,192,802	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,192,479	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,191,246	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,190,526	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,190,487	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,190,477	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,189,016	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,188,353	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,187,691	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,187,668	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha
7,186,663	Sharp Laboratories of America, Inc.	Sharp Kabushiki Kaisha

For at least the foregoing reasons, Applicants respectfully submit that claims 47-53, 55-63, 65-72 and 74-75 are allowable. Accordingly, Applicants respectfully request that the rejection of these claims be withdrawn.

III. Claims 47, 57 and 67 Rejected Under 35 U.S.C. § 103(a)

Claims 47, 57 and 67 stand rejected under 35 U.S.C. § 103(a) based on alleged "Admitted Prior Art" in view of U.S. Patent No. 7,148,980 to Tominaga (hereinafter, "Tominaga"). Applicants respectfully traverse.

The factual inquiries that are relevant in the determination of obviousness are determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claims in issue, resolving the level of ordinary skill in the art, and evaluating evidence of secondary consideration. KSR Int'l Co. v. Teleflex Inc., 550 U.S. ___, 2007 U.S. LEXIS 4745, at **4-5 (2007) (citing Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966)). As the Board of Patent

Appeals and Interferences has recently confirmed, "obviousness requires a suggestion of all limitations in a claim." In re Wada and Murphy, Appeal 2007-3733 (citing CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)). Moreover, the analysis in support of an obviousness rejection "should be made explicit." KSR, 2007 U.S. LEXIS 4745, at **37. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id. (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Claim 47 will be discussed initially. On pages 9-10 of the Office Action, the Examiner lists certain subject matter in claim 47 and refers to this subject matter as "Admitted Prior Art." However, Applicants respectfully disagree with the Examiner's assertion. Applicants have ***not*** admitted that this subject matter is prior art.

For example, the Examiner asserts that Applicants have admitted that the following portion of claim 47 is admitted prior art: "load[ing] each of the plurality of individual software components that are to be loaded, as indicated in the loading table, into the volatile memory so that these software components are all loaded into the volatile memory at the same time." The Examiner refers to "col. 2: 3-15" in connection with this claimed subject matter. Applicants assume that the Examiner is referring to page 2, lines 3-15 of Applicants' specification[1]. However, page 2, lines 3-15 of Applicants' specification does ***not*** include an admission that the claimed subject matter at issue is prior art.

The cited portion of Applicants' specification states: "Typically at startup, embedded systems copy items from non-volatile memory to volatile memory or to RAM. Data stored in RAM may be accessed faster and thus improves performance of the embedded system. As a result, it is desirable to use RAM when possible." As can clearly be seen, the cited portion of Applicants' specification does not say anything about a "loading table" or "load[ing] ... individual software components ... as indicated in the loading table." Thus, Applicants have not admitted that the

[1] If this assumption is incorrect, Applicants respectfully request that the Examiner provide additional explanation regarding what the reference to "col. 2: 3-15" means.

claimed subject matter at issue is prior art.

Moreover, Applicants respectfully submit that claim 47 is patentably distinct from Tominaga. Tominaga does not teach or suggest all of the subject matter of claim 47.

The Examiner asserts that the "loading table" in claim 47 is taught by an "output device administration table" in Tominaga. (See Office Action, page 10.) Applicants respectfully disagree. There are several significant differences between the "loading table" in claim 47 and the "output device administration table" in Tominaga.

First, the "loading table" in claim 47 is stored on a "multi-functional peripheral." In particular, claim 47 is directed to a "multi-functional peripheral." Claim 47 recites that the "multi-functional peripheral ... compris[es] ... non-volatile memory," and that the "non-volatile memory compris[es] ... a loading table." Thus, the "loading table" in claim 47 is stored on a "multi-functional peripheral."

In contrast, the "output device administration table" in Tominaga is ***not*** stored on a multi-functional peripheral. Tominaga states that the "output device administration table" is "stored in the RAM 1208." (Tominaga, col. 16, lines 55-56.) The RAM 1208 is part of a document server 102. (See Tominaga, Figure 12.) The document server 102 is separate from the multi-functional peripheral devices 105a-d. (See Tominaga, Figure 1.)

Moreover, claim 47 recites that the "loading table" provides information about "individual software components," including "software libraries." In contrast, the "output device administration table" does not indicate anything about "individual software components" or "software libraries." The "output device administration table" includes the following fields: Printer Type, Printer Name, IP Address, Finishing Option, and License. (See Tominaga, Figures 26 and 29.) None of these fields can reasonably be construed as a "software component[]" or a "software librar[y]" as recited in claim 47.

Additionally, claim 47 recites that the "loading table indicates which of the plurality of individual software components are loaded into the volatile memory and which of the plurality of individual software components are not loaded into the volatile memory." The "output device

administration table" in Tominaga does not have anything to do with "indicat[ing] which ... software components are loaded into the volatile memory," as recited in claim 47. Rather, the "output device administration table" in Tominaga just includes a list of registered MFPs and certain information (e.g., name, type, IP address, etc.) about those MFPs.

Claim 47 also recites "examin[ing] the loading table to determine which of the plurality of individual software components are to be loaded into the volatile memory." Tominaga does not teach or suggest this claimed subject matter.

The Examiner refers to the following portions of Tominaga in connection with this claimed subject matter: Figures 26 and 29, and col. 16, line 59 - col. 17, line 18. (See Office Action, page 10.) Applicants have reviewed the cited portions of Tominaga, and Applicants cannot find the claimed subject matter taught or suggested therein.

Figures 26 and 29 of Tominaga show different examples of the "output device administration table." However, as discussed above, the "output device administration table" is not a "loading table" within the meaning of claim 47.

Col. 16, line 59 - col. 17, line 18 of Tominaga discusses step S2505 in the method shown in Figure 25A of Tominaga. However, this step does not have anything whatsoever to do with "determin[ing] which of the plurality of individual software components are to be loaded into the volatile memory," as recited in claim 47. Rather, step S2505 in Tominaga relates to determining whether "the number of registered MFPs 105 is less than the number of licenses." (Tominaga, col. 16, lines 65-67.)

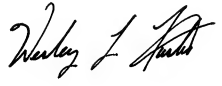
For at least the foregoing reasons, Applicants respectfully submit that claim 47 is allowable. Accordingly, Applicants respectfully request that the rejection of claim 47 be withdrawn.

Claims 57 and 67 include subject matter that is similar to the subject matter discussed above in relation to claim 47. Accordingly, Applicants respectfully request that the rejection of claims 57 and 67 be withdrawn for at least the same reasons as those presented above in relation to claim 47.

IV. Conclusion

Based on the foregoing, Applicants respectfully request that the rejections be withdrawn and that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



/Wesley L. Austin/

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Appendix A: Wikipedia Definition

(7 pages including this cover page)

Kabushiki kaisha

From Wikipedia, the free encyclopedia

Kabushiki kaisha or **kabushiki gaisha** (株式会社? lit. "stock companies") are a type of company (会社 *kaisha*?) defined under Japanese law.

Contents

Usage in language

Both *kabushiki **ka**isha* and the rendaku form *kabushiki **ga**isha* are used. The "K" spelling is much more common in the names of companies and in English-language legal literature, whereas the "G" pronunciation is more common in Japanese.

In Japanese, "*kabushiki gaisha*" can be used as a prefix (e.g. 株式会社電通 *Kabushiki Gaisha Dentsū*) or as a suffix (e.g. トヨタ自動車株式会社 *Toyota Jidōsha Kabushiki Gaisha*). It is often abbreviated as "(株)," its first character.

Many Japanese companies translate the phrase "kabushiki kaisha" as "**Co., Ltd.**" while others use the more Americanized translations **Corporation** or **Incorporated**. English texts often refer to kabushiki kaisha as "joint stock companies"; while this is close to a literal translation of the term, the two are not the same. The Japanese government previously endorsed "business corporation" as an official translation[1] but now uses the literal translation "stock company."[2]

History

Companies law

Basic forms:

Sole proprietorship

Partnership
(General · Limited · LLP)

Corporation
(LLC)

Cooperative

United States:

Business trust
LLLP · Series LLC
Delaware corporation
Nevada corporation

European Economic Area, including European Union:

SE · SCE

United Kingdom / Commonwealth / Ireland:

Limited company
(By shares · By guarantee)
(Public · Proprietary)
Community interest company

Civil law countries:

AB · AG · ANS · A/S · AS
K.K. · N.V. · OY · S.A. · GmbH

Doctrines

Corporate governance
Limited liability · Ultra vires
Business judgment rule
Internal affairs doctrine
De facto corporation and corporation by estoppel
Piercing the corporate veil
Rochdale Principles

Related areas of law

Contract · Civil procedure

The first kabushiki kaisha was the First National Bank of Japan, incorporated in 1873.

Rules regarding kabushiki kaisha were set out in the Commercial Code of Japan. During the American occupation following World War II, the occupation authorities introduced revisions to the Commercial Code based on the Illinois Business Corporation Act of 1933, giving kabushiki kaisha many traits of American corporations.[3]

Over time, Japanese and U.S. corporate law diverged, and K.K. assumed many characteristics not found in U.S. corporations. For instance, a K.K. could not buy back its own stock (a restriction which still stands), issue stock for a price of less than ¥50,000 per share (effective 1982), or operate with paid-in capital of less than ¥10 million (effective 1991).[4]

On June 29, 2005, the Diet of Japan passed a new Corporation Code (会社法 *kaisha-hō*?), which took effect on May 1, 2006.[5] The new law greatly affected the formation and function of K.K.'s and other Japanese business organizations, bringing them closer to their contemporary counterparts in the U.S.

A complete translation into English of the new corporations law and summary analysis is available at www.japanlaw.info

Formation

A kabushiki kaisha may be started with capital as low as ¥1, making the total cost of a K.K. incorporation approximately ¥240,000 (about US$2,000) in taxes and notarization fees. Under the old Commercial Code, a K.K. required starting capital of ¥10 million (about US$87,000); a lower capital requirement was later instituted, but corporations with under ¥3 million in assets were barred from issuing dividends, and companies were required to increase their capital to ¥10 million within five years of formation. [6]

The main steps in incorporation are:

1. Preparation and notarization of articles of incorporation
2. Receipt of capital, either directly or through an offering

The incorporation of a K.K. is carried out by one or more incorporators (発起人 *hokkinin*?, sometimes referred to as "promoters"). Although seven incorporators were required as recently as the 1980s, a K.K. now only needs one incorporator, which may be an individual or a corporation. If there are multiple incorporators they must sign a partnership agreement before incorporating the company.

Articles of incorporation

The articles of incorporation of a K.K. must include, at a minimum:

1. The name of the company
2. The purposes of the company
3. The location of its head office
4. The value or minimum amount of assets received in exchange for the initial issuance of shares
5. The name and address of the incorporator(s)

The purpose statement requires some specialized knowledge, as Japan follows a strict ultra vires doctrine and does not allow a K.K. to be formed "for any purpose," as is legal in most of the English-speaking world. Judicial or administrative scriveners are often hired to draft the purposes of a new company.

Additionally, the articles of incorporation must contain the following if applicable:

1. Any non-cash assets contributed as capital to the company, the name of the contributor and the number of shares issued for such assets
2. Any assets promised to be purchased after the incorporation of the company and the name of the provider
3. Any compensation to be paid to the incorporator(s)
4. Non-routine incorporation expenses which will be borne by the company

Other matters may also be included, such as limits on the number of directors and auditors. The Corporation Code allows a K.K. to be formed as a close corporation (非公開株式会社 *hikōkai kabushiki kaisha*[7]), in which case the board of directors must approve any transfer of shares between shareholders; this designation must be made in the articles of incorporation.

The articles must be sealed by the incorporator(s) and notarized by a notary public, then filed with the Legal Affairs Bureau in the jurisdiction where the company will have its head office.

Receipt of capital

In a direct incorporation, each incorporator receives a specified amount of stock as designated in the articles of incorporation. Each incorporator must then promptly pay their share of the starting capital of the company, and if no directors have been designated in the articles of incorporation, meet to determine the initial directors and other officers.

The other method is an "incorporation by offering," in which each incorporator becomes the underwriter of a specified number of shares (at least one each), and the other shares are offered to other investors. As in a direct incorporation, the incorporators must then hold an organizational meeting to appoint the initial directors and other officers. Any person wishing to receive shares must provide an application to the incorporator, and then make payment for their shares by a date specified by the incorporator(s).

Capital must be received in a commercial bank account designated by the incorporator(s), and the bank must provide certification that payment has been made. Once the capital has been received and certified, the incorporation may be registered at the Legal Affairs Bureau.

Structure

Board of directors

Under present law, a K.K. must have a board of directors (取締役会 *torishimariyaku kai*[7]) consisting of at least three individuals. Directors have a statutory term of office of two years, and auditors have a term of four years. Close companies can exist with only one director, with no statutory term of office.

At least one director is designated as a representative director (代表取締役 *daihyō torishimariyaku*?), holds the corporate seal and is empowered to represent the company in transactions. The representative director must "report" to the board of directors every three months; the exact meaning of this statutory provision is unclear, but some legal scholars interpret it to mean that the board must meet every three months. At least one director and one representative director must be a resident of Japan.[5]

Directors are mandatories (agents) of the shareholders, and the representative director is a mandatory of the board. Any action outside of these mandates is considered a breach of mandatory duty.[7]

Auditing and reporting

Every K.K. with multiple directors must have at least one statutory auditor (監査役 *kansayaku*?). Statutory auditors report to the shareholders, and are empowered to demand financial and operational reports from the directors.

K.K.s with capital of over ¥500m, liabilities of over ¥2bn and/or publicly traded securities are required to have three statutory auditors, and must also have an annual audit performed by an outside CPA. Public K.K.s must also file securities law reports with the Ministry of Finance.

Under the new Company Law, public and other non-close K.K.s may either have a statutory auditor, or a nominating committee (指名委員会 *shimei iinkai*?), auditing committee (監査委員会 *kansa iinkai*?) and compensation committee (報酬委員会 *hōshū iinkai*?) structure similar to that of American public corporations.

Close K.K.s may also have a single person serving as director and statutory auditor, regardless of capital or liabilities.

A statutory auditor may be any person who is not an employee or director of the company. In practice, the position is often filled by a very senior employee close to retirement, or by an outside attorney or accountant.

Officers

Japanese law does not designate any corporate officer positions. Most Japanese-owned kabushiki kaisha do not have "officers" *per se*, but are directly managed by the directors, one of whom generally has the title of president (社長 *shachō*?). The Japanese equivalent of a corporate vice president is a department chief (部長 *buchō*?). Traditionally, under the lifetime employment system, directors and department chiefs begin their careers as line employees of the company and work their way up the management hierarchy over time. This is not the case in most foreign-owned companies in Japan, and some native companies have also abandoned this system in recent years in favour of encouraging more lateral movement in management.

Other legal issues

Taxation

Kabushiki kaisha are subject to double taxation of profits and dividends, as are corporations in most

countries. In contrast to many other countries, however, Japan also levies double taxes on close corporations (yugen kaisha and godo kaisha). This makes taxation a minor issue when deciding how to structure a business in Japan. As all publicly traded companies follow the K.K. structure, smaller businesses often choose to incorporate as a K.K. simply to appear more prestigious.

In addition to income taxes, K.K.s must also pay registration taxes to the national government, and may be subject to local taxes.

Derivative litigation

Generally, the power to bring actions against the directors on the corporation's behalf is granted to the statutory auditor.

Historically, derivative suits by shareholders were rare in Japan. Shareholders have been permitted to sue on the corporation's behalf since the postwar Americanization of the Commercial Code; however, this power was severely limited by the nature of court costs in Japan. Because the cost to file a civil action is proportional to the amount of damages being claimed, shareholders rarely had motivation to sue on the company's behalf.

In 1993, the Commercial Code was amended to reduce the filing fee for all shareholder derivative suits to ¥8,200 per claim. This led to a rise in the number of derivative suits heard by Japanese courts, from 31 pending cases in 1992 to 286 in 1999, and to a number of very high-profile shareholder actions, such as those against Daiwa Bank and Nomura Securities [8]

See also

- Yugen kaisha
- Godo kaisha
- Gomei kaisha
- Goshi kaisha

Footnotes

1. ^ "法令用語「日英対訳辞書」まとまる　政府検討委," *Asahi Shimbun*, March 18, 2006. (summary)
2. ^ *Standard Bilingual Dictionary of Legal Terminology*.
3. ^ Ramseyer, Mark, and Minoru Nakazato, *Japanese Law: An Economic Approach* (Chicago: University of Chicago Press, 1999), p. 111.
4. ^ Ramseyer, *op. cit.*, p. 123.
5. ^ *a b* Japan External Trade Organization, "Investing in Japan: Incorporating Your Business at the Internet Archive Wayback Machine."
6. ^ Terrie Lloyd, "One Yen Companies - Part Two," Work in Japan.com.
7. ^ *Yamazaki Bakery K.K. v. Iijima*, 1015 Hanrei Jiho 27 (Tokyo Dist. Ct., March 26, 1981).
8. ^ West, Mark D. "Why Shareholders Sue: The Evidence from Japan," *Journal of Legal Studies* 30:351 (2001).

Retrieved from "http://en.wikipedia.org/wiki/Kabushiki_kaisha"

Categories: Types of companies | Japanese business law | Japanese business terms

Appendix B: Redacted Agreement

(4 pages including this cover page)

THE BASIC AGREEMENT ON RESEARCH DEVELOPMENT AND SERVICE

AGREEMENT made and entered into this first day of July 1995 by and between:

SHARP CORPORATION, a Japanese corporation having its principal place of business at 22-22 Nagaike-cho Abeno-ku Osaka 545 Japan (hereinafter referred to as "Sharp")

and

SHARP LABORATORIES OF AMERICA INC., a Washington corporation incorporated in the State of Washington having its principal place of business at 5700 NW Pacific Rim Blvd., Camas WA 98607 (hereinafter referred to as "SLA")

[redacted]

[redacted]

After the completion of patent application, SLA shall assign its right to Sharp.

[redacted]

C. All rights in the patent applications described in B of this Article and the patents issuing therefrom shall vest in Sharp.

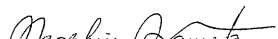
[redacted]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the date first above written.

SHARP LABORATORIES OF AMERICA, INC.

Jon K. Clemens
President and CEO

SHARP CORPORATION



Masahiro Aramoto
Senior Executive
Director